



Viterrra Operations Limited

Response to the ACCC's request for information dated 15 April 2011

A Introduction

1 Purpose of submission

This submission sets out responses by Viterrra Operations Limited ("Viterrra Operations") to the matters raised in the ACCC's information request dated 15 April 2011.

2 [Confidential]

[Confidential]

B Questions raised by the ACCC

1 Capacity allocation

1.1 General Information

Please provide the following information:

- (a) *Please provide the following information (in table format) on the available capacity at each port for each particular shipping slot on which this assessment is made (this information may be provided as a range):*

- *Total inward elevation capacity*
- *Total storage capacity*
- *Total out-loading capacity*

Please provide any assumptions used to make these calculations (for example staff numbers, mode of receipt, hours of operation).

[Confidential]

- (b) *For each of the periods: 1 October 2009 to 30 September 2010, and 1 October 2010 to the date of receipt of this notice, please provide the following information (in table format) in relation to each port, per shipping slot:*

- *Total throughput (i.e total tonnage loaded onto vessel for all commodities)*
- *The proportion of bulk grain that arrived at port by rail, including Viterrra contracted rail and third party rail*
- *The proportion of bulk grain that arrived at port by road, including Viterrra contracted transport providers and third party transport*

[Confidential]

- (c) *For the period 1 October 2010 to the date of receipt of this notice, provide details of any shipping slots, at any port where there was insufficient intake, grain storage*

and shipping capacity to accept bookings onto the shipping stem in accordance with clause 3 of the port loading protocols.

[Confidential]

- (d) *For the period 1 October 2010 to the date of receipt of this notice, provide the following details of any ‘additional capacity’ that was made available after the ‘available capacity table’ indicated that there was no capacity:*

- *Port*
- *Shipping slot*
- *Date available capacity table indicated no capacity was available*
- *Date capacity became available*
- *Circumstances regarding how that capacity became available*
- *Which exporter, if any, utilised the additional capacity made available*

[Confidential]

- (e) *The ACCC understands that following the audit conducted by Wheat Exports Australia (WEA), Viterro Operations Ltd implemented a number of improvements to its business processes and procedures. Please explain the changes implemented as a result of the WEA audit and supply any supporting documentation in relation to:*

- *Lines of reporting, accountability*
- *Policy in relation to ensuring compliance with continuous disclosure rules*
- *Escalation of decision making about Viterro's Ltd bookings on the shipping stem and whether and when slots held by Viterro Ltd should be vacated*

As set out in Viterro Operations' submission to WEA dated 27 October 2010, Viterro Operations has implemented a number of improvements to its systems and processes to address the issues identified in the auditor's report.

A summary of these improvements – which WEA accepted as addressing its concerns in relation to the matters raised in the audit report – is set out below.

- (i) *Lines of reporting and accountability*

Since October 2010, Viterro Operations and Viterro Limited have implemented:

- specific compliance training presentations for staff in relation to obligations under the *Wheat Export Marketing Act*, the *Wheat Export Marketing Scheme*, the conditions of Viterro Ltd's accreditation and the Current Access Undertaking. This is in addition to Viterro's standard *Competition and Consumer Act* compliance training; and
- further training for staff to develop and enhance the companies' business focus and culture of accountability and compliance.

[Confidential]

- (ii) *Compliance with continuous disclosure rules*

Viterra Operations has taken a number of steps to develop and improve its business systems and business rules to ensure continued compliance with the continuous disclosure rules, [Confidential].

Viterra Operations has also taken the following steps to ensure greater transparency and provision of information to clients since the auditor's report:

- **Capacity table** – publishing a “capacity table” on its website which provides greater clarity in relation to available Export Select and Export Standard capacity. This involved Viterra Operations consulting with the ACCC in relation to the proposed developments;
- **Additional shipping stem information** – amending the shipping stem to include commodity information for clients. Previously, the shipping stem listed the commodity type as “wheat” or “other”. This is now broken down into specific commodities. In addition, when a vessel is named on the shipping stem, Viterra Operations publishes the date and time;
- **Access to grower warehousing information** – implementing a system which enables growers to “opt in” to have information on their grain stored in warehouse disclosed to grain marketers. If they choose not to disclose this information, Viterra Operations will maintain the growers’ privacy. A consent form is provided on Viterra Operations’ website and information from those growers who have “opted in” is provided to grain marketers on a monthly basis (the consent form is attached as **Attachment 6**);
- **Quality data information** – publishing additional information so that grain owners can access quality site data for standard grades via ezigrain by 1 January each year;¹
- **Increased information regarding exported grain** – publishing on its website information in relation to monthly tonnages shipped from Viterra Operations’ ports, broken down *into port zone and commodity*; and
- **Early publication of Reference Prices** – publishing its new Reference Prices in August 2010 which is earlier than the date for publication in previous years, providing additional time for clients to consider and plan their requirements.

In addition, since the audit report, Viterra Operations has implemented a number of changes to the Port Loading Protocols to provide greater transparency and certainty for clients. Viterra Operations has previously provided details of these changes to the ACCC.

[Confidential]

Viterra Operations has also undertaken the following steps to improve the management of, and decision-making in respect of, its bookings process:

- steps to roll-out an automated / online booking system;
- steps to develop and enhance software to assist in managing the booking process, communications with clients and compliance; and

¹ See <http://ezigrain.abb.com.au/QualityStats/QualityStats2.asp?commodity=wheat&date=02-May-2011>

- engaging additional resources as required to assist in the management of the booking and nomination process.

[Confidential]

- (f) *For the period 1 October 2010 to the date of receipt of this notice, please provide the following details for bookings accepted onto the shipping stem in accordance with clause 3 of the port loading protocols for a commodity other than bulk wheat that were subsequently amended resulting in the shipping of bulk wheat:*

- *Shipping slot*
- *Port*
- *Exporter*
- *Tonnage*
- *Initial commodity booked*
- *Date amendment made to booking that appeared on the shipping stem*

[Confidential]

1.2 Export Select / Export Standard

- (a) *If all bookings are executed as Export Select, what would be the total shipping capacity available at each port in a particular shipping slot? If all bookings are Export Standard, what would be the total shipping capacity available through each port in a particular shipping window? If this figure varies throughout the year, please provide details.*

[Confidential]

As previously stated in our submission to the ACCC dated 23 March 2011, there appears to be some confusion in relation to the way that inward elevation capacity at Viterro Operations' Port Terminals is made available to the Export Standard and Export Select pathways.

Clients – regardless of whether they use the Export Select or Export Standard pathway – have an equal (and the same) opportunity to book Port Terminal Services capacity. It is the client's choice as to which pathway they use.

Export Standard bookings are constrained only by the available capacity at port and existing bookings (whether Export Standard or Export Select). It is theoretically possible for all capacity to be allocated to Export Standard bookings.

Export Select bookings are constrained by the available capacity at port, existing bookings (whether Export Standard or Export Select), and the availability of Viterro Operations' logistics capacity upcountry, including transportation resources to deliver that grain to port.

This means that, subject to capacity and transportation constraints, clients always have a choice to use Export Standard or Export Select to take advantage of available capacity.

- (b) ***What are the factors that determine the quantity of available Export Select and Export Standard capacity? How variable are these factors? How does a booking of Export Select impact on the availability of Export Standard capacity and vice versa?***

Capacity - General factors

There are a number of factors which affect the amount of actual capacity available at port (whether for Export Standard or Export Select) at any given time.

For the most part, the amount of available storage space at each Port Terminal, and the type of processing infrastructure (including type of storage, the number of elevators, discharge points, segregation capabilities and size of bins) will determine available capacity at a particular Port Terminal. For example, if grain is stored in bunkers at port, the grain will need to be physically moved back into a shipping position which can affect available labour and capacity at a given time. On the other hand, elevators can be utilised for multi-functions (e.g. shipping, inward elevation and transfer of grain).

As set out in [Confidential], the available storage facilities vary from port to port.

In addition, available capacity will be affected by:

- the availability of labour at port (e.g. AQIS is not always able to staff the loading of vessels at particular ports);
- the availability of labour at up-country storage sites operated by Viterro Operations and third parties;
- the availability and efficiency of transporters (rail transport efficiency is less variable than road transport efficiency);
- the existence of any mechanical breakdowns at port or up-country;
- the spread of vessel arrivals / nominations at port – if vessel nominations, and arrivals, are spread evenly throughout the year, this enables storage to be continually utilised; and
- the frequency and severity of vessel failures (currently, 15% of vessels are failing).

Adverse weather conditions can also affect capacity, as it may make loading at up-country Viterro Operations and third party storage sites impractical, and can also affect the operation of trains and prevent vessel loading.

Commodity type (and the services available for up-country accumulation of particular commodity types) may also have an impact on available Port Terminal capacity. For example, wheat and feed barley is generally received across the majority of up-country sites, both within the Viterro Operations' network and by other storage providers. This tends to provide a mix of road and rail accumulation ability. However, receipt points are generally more limited for the minor grain commodities (e.g. in 2010/11 canola could only be received at approximately 20% of sites). This can impact on a client's ability to accumulate those commodities in a similar timeframe as the major wheat and barley grades.

Further, commodity type may make it necessary to rely on road accumulations (e.g. due to the need for soft handling of pulses), which may limit the use of, and capacity provided by, rail. In turn, this can affect the amount received into port each day. Sites that provide “soft handling” for pulses may also be less efficient to outturn as compared to sites which do not provide this additional service.

Client requirements for segregation and blending will also affect capacity. It is necessary to ensure that the Port Terminal is cleaned adequately and to appropriate standards between use of different commodities to prevent quality issues which may reduce the practical capacity available at a given time.

Grower receivals at harvest may utilise common resources which are shared with shipping services and which may negatively impact on capacity. Conversely, the stocks in port provided by grower receivals may enable continued throughput at a time when logistics to port is a constraint.

Export Select and Export Standard

There are also a number of factors that are specific to each of Export Standard and Export Select. In particular:

- **Export Standard** – Inward elevation capacity is allocated on a first in first served basis. The total (static) Export Standard capacity available at any given Port Terminal will be equal to the total inward elevation capacity at that port. Given that Export Standard deliveries require that the client provides logistics services, the client’s ability to provide transport capacity (road or rail) will affect available inward elevation capacity; and
- **Export Select** – As set out in previous submissions, Viterro Operations provides a set amount of Export Select capacity at each Port Terminal, based on providing transport and operational capacity during normal working hours – rail is scheduled to operate 7 days a week and road accumulation on a 5 day week basis. Nominations for Export Select can be made until all of the designated Export Select capacity is utilised (unless that inward elevation capacity has already been nominated by clients to the Export Standard path).

Viterro Operations takes the following factors into account to estimate available Export Select capacity in advance:

- its ability to secure road transport;
- the number of trains that will be operating;
- up-country storage availability;
- grain stock availability; and
- anticipated operational issues.

This assessment is undertaken on a port-by-port and period-by-period basis.

Accordingly, the amount of capacity available for either Export Standard or Export Select is dynamic.

As set out in previous submissions, Viterra Operations devotes significant resources during the harvest period to making additional capacity available and to finding capacity solutions for clients - both Export Select and Export Standard. Viterra Operations also advises all clients by email at the same time if additional capacity becomes available.

- (c) *For the period 1 October 2010 to the date of receipt of this notice, please provide details of all Export Standard bookings that were nominated and accepted onto the shipping stem and subsequently executed as an Export Standard booking.*

[Confidential]

- (d) *Please provide a copy of the terms and conditions of supply of Export Select.*

Please see **Attachments 10 to 12**.

The terms and conditions which apply to Export Select comprise:

- the 2010/11 Storage & Handling Agreement; and
- the 2010/11 Pricing, Procedures & Protocols - Schedules A-I.

These terms and conditions can be negotiated with individual Clients.

For completeness, **Attachment 12** sets out the 2010/11 Pricing, Procedures and Protocols - Explanatory Notes the attachments include the following documents which Viterra Operations has published to assist Clients in understanding the terms and conditions that apply to Viterra Operations' services.

- (e) *For the period 1 October 2010 to the date of receipt of this notice, please provide details as to any refusals of Export Standard bookings, including:*

- *Port*
- *Shipping slot nominated*
- *Exporter*
- *Tonnage*
- *Commodity*
- *Reason for refusal*
- *Whether any Export Select capacity was available at the time of refusal*

[Confidential]

- (f) *For the period 1 October 2010 to the date of receipt of this notice provide the following details for vessels that were not loaded on the "Load Date" allocated pursuant to clause 5 of the port loading protocols:*

- *Port*
- *Shipping slot*
- *Exporter*
- *Tonnage*
- *Allocated load date*
- *Whether the booking was Export Select or Export Standard*
- *Actual load date*
- *Total tonnage of bookings accepted onto the shipping stem for that 15 day window*

- *Reason(s) for the delay between allocated load date and actual load date*

This question is currently the subject of further discussions with the ACCC.

1.3 Performance Risk / Anti-hoarding

- (a) *For the period 1 October 2009 to the date of receipt of this notice, please provide details as to the operation of clause 12 of the Port Loading Protocols to either request information or to refuse a booking. Details should include, but not be limited to:*

- *Shipping slot(s)*
- *Port*
- *Exporter*
- *Tonnage*
- *If information was sought, the information requested and supplied*
- *Whether the booking nomination was accepted onto the shipping stem in whole or in part*

[Confidential]

To date, Viterro Operations has not rejected any booking by a client under clause 12 of the Port Loading Protocols.

- (b) *The ACCC understands that clause 12 of the Port Loading Protocols has been applied in the consideration of bookings made for execution after 30 September 2011. Please provide the following details:*

- *Which booking(s) are subject to consideration under clause 12 (exporter, shipping slot, port)*
- *An explanation of how clause 12 has been applied in respect of each such exporters booking(s)*
- *Details of any refusals due to the application of clause 12 of the Port Loading Protocols.*

[Confidential]

2 Treatment of wheat from third party storage

2.1 Differential Prices

- (a) *Based on the reference prices published in accordance with the proposed access undertaking and correspondence received from Viterro on 3 February 2011, the ACCC's current understanding of Viterro's receival at port charges is as follows:*

- *For ex Viterro storage grain, the charge is \$3.40 per tonne for road receivals or \$2.20 per tonne for rail receivals.*
- *For ex Approved Third Party Storages grain, the charge is \$5.90 per tonne for road receivals or \$4.70 for rail receivals. This includes the 'Port In-Loading Fee (Wheat)' and the 'Receival At Port Service Fee (from Approved third party storage)'.*
- *For grain delivered from all other sources including from non- approved third party storage facilities and grain delivered direct from growers, the charge is \$13.30 per tonne for major wheat grades or \$14.35 per tonne for minor wheat grades.*

Please confirm whether the ACCC's current understanding of the differential charges applied by Viterra to grain received, is correct. If the above interpretation is incorrect, please provide the total applicable receival fees for grain received from each source.

This reflects the receival fees set out in Viterra Operations' Reference Prices for the 2010/2011 service year. However, it does not reflect any fees individually negotiated with third party clients or third party storage and handling providers.

(b) *What are the services provided for each of the following fees:*

- ***'Receival fee' for major and minor wheat (Ref. A1)***
- ***'Port In-Loading Fee (Wheat)' for rail and road receivals (Ref. B2)***
- ***'Receival At Port Service Fee (from Approved third party storage)' (Ref. C7)?***

[Confidential]

(c) *How are each of these fees determined?*

[Confidential]

(d) *Viterra stated in its submission dated 23 March 2011 that it is necessary 'to provide a number of additional services at port in relation to wheat which is received directly from growers or from other storage systems'. What, if any, are the differences between the services, testing, treatments and processes applied to grain received at port from:*

- ***Viterra's own storage facilities***
- ***Approved third party storage facilities***
- ***Non-approved third party storage facilities***
- ***Farm gate (i.e. delivered direct to port from harvest)***
- ***Any other supply chain options not included in categories listed above?***

[Confidential]

(e) *Viterra stated in its submission of 23 March 2011 that it is necessary to provide different services due to the increased risk faced by Viterra in receiving grain from third party sites. Please provide any quantitative data supporting differing rates of insect infestation, presence of pesticide residues, quality misrepresentation or any other factors relevant to Viterra's risk management between grain received from:*

- ***Viterra's own storage facilities***
- ***Approved third party storage facilities***
- ***Non-approved third party storage facilities***
- ***Farm gate (i.e. delivered direct to port from harvest)***
- ***Any other supply chain options not included in categories listed above?***

As stated in our previous submissions, the risks associated with, and the potential impact resulting from, the receival of contaminated grain are significant. Potential consequences include:

- contamination of other grain stocks (which may involve substantial costs for other clients, an inability to meet contractual obligations to customers and

long-term damage to the reputation of South Australian grain in export markets);

- rejection by AQIS for export, and resulting delays in shipping and substantial demurrage costs;
- blocking of port capacity (e.g. if Viterra Operations cannot receive, handle or load grain while it manages and remediates contamination issues);
- required remedial activities to manage issues (e.g. cleaning of facilities, moving grain to ensure appropriate segregation etc);
- quality claims (both against the owner of the contaminated grain, the affected grain and, potentially, Viterra Operations); and
- potential reputation impacts to clients, the bulk handler, and the South Australian and national grain industries.

Viterra Operations seeks to reduce these risks (and the impact of these risks) by providing certain services when grain is received into its system. In particular, Viterra Operations undertakes sampling activities to obtain a representation of the quality of the grain received. Sampling does not guarantee that there will be no contamination issues (i.e. by definition, Viterra Operations only looks at a sample). However, this, together with Viterra Operations' other processes is designed to reduce the level of risk.

If a delivery of grain from a third party does not meet the declared grade specifications, or another issue is identified during the sampling process, Viterra Operations does not automatically reject the delivery. Viterra Operations' policy is to work with the client to determine an appropriate course of action. This may include grain segregation and management and/or the sourcing of alternate stock to meet vessel accumulation and loading requirements. However, where appropriate alternative arrangements cannot be made, a load will need to be rejected to ensure against the risks associated with grain contamination.

[Confidential]

[Confidential], there have been a number of recent rejections of grain received from third party storage facilities due to contamination concerns. For example,
[Confidential]

[Confidential]

The number of rejections of grain received direct from growers due to contamination is even higher and, as a result, it is necessary to undertake greater sampling and additional processes in respect of those receivals. [Confidential]

A copy of section 4 of Viterra's Commodity Classification Manual (Wheat) is included at **Attachment 17**. This sets out standards and information pertaining to contaminants in wheat.

- (f) *Based on Viterra's published reference prices, the ACCC understands that the \$1.20 differential between grain received via rail and road transport is not applied to grain received from sites other than Viterra's own storage sites and approved*

third party sites. Is grain from non-approved storage sites received from both road and rail? If yes, why is the differential not applied in this case?

As a practical matter, grain is only delivered to Viterro Operations' Port Terminals via rail from Viterro Operations' and Approved third party up-country storage facilities.

However, in the event that grain from a site other than a Viterro Operations or Approved third party up-country storage facility was received via rail, then, subject to the outcome of any commercial negotiations which might take place, the \$1.20/mt differential between road and rail receivals would be likely to apply.

- (g) ***Based on Viterro's published reference prices the ACCC understands that the \$1.05 differential between major and minor wheat is not applied to grain received from Viterro's own storage sites and approved third party sites. Does Viterro receive both types of wheat from these sites? If yes, why is the differential not applied in this case?***

The \$1.05 differential between the receival fee for major and minor grades of wheat reflects the cost of providing receival, storage and segregation services to the smaller volume, non-standard grades of wheat on initial entry to Viterro Operations' system.

This differential does not apply to wheat received from Viterro Operations' and Approved Third Party Storage up-country facilities because, in each case, the additional services required in respect of minor wheat grades are provided at the up-country location (i.e. upon receival into the relevant up-country facility). Conversely, the first time that these services are provided in respect of minor grade of wheat delivered directly from growers is when it is received at Viterro Operations' Port Terminals.

Viterro Operations does not require the re-supplying at port of services that have already been supplied at up-country locations, as to do so would result in inefficient double charging for clients.

- (h) ***What factors are reflected in the differing shrinkage rates applied to grain delivered to a Port Terminal from approved third party sites, and from other third party sites? Does the shrinkage factor applied to grain that has been stored for a period of time in non-approved third party storage differ from grain that is received direct from farm?***

Shrinkage is the loss of grain mass which occurs in the normal storage and handling process, including loss of mass through changes in moisture content, handling processes, insect infestation and through wastage. Shrinkage levels may vary having regard to the following factors:

- the type and location of storage (for example, bunker storages are more prone to weather impacts than sheds or vertical storage. A recent event occurred due to the inability to cover an exposed bunker in high winds resulting in grain being exposed to heavy rainfall);
- the methods used for transporting and moving grain (for example, moving grain via conveyors on site versus road transport);
- the number of times the grain is transported or moved while in storage – the more times the grain is moved, the greater the shrinkage;

- the moisture content of the grain – the higher the moisture content, the greater the shrinkage;
- the presence of lightweight material and other contaminants – the greater the presence of contaminants, the greater the shrinkage; and
- the presence of insects – insects cause shrinkage.

Given the quality and standard of the storage and handling services provided by Approved third party storage facilities relative to on-farm storage or “non-approved third party storage” (i.e. direct grower deliveries), Viterro Operations would expect there to be a lower shrinkage rate for grain received after being held in Approved third party storage facilities. This is reflected in our Reference Prices.

[Confidential]

- (i) ***How is the \$2.45 rebate for Export Select bookings applied, and is this differential reflective of reduced costs? If so, please provide information in relation to the differences in cost to Viterro of Export Select and Export Standard bookings.***

The \$2.45 rebate represents a mechanism for Viterro Operations to share with its clients the efficiencies and cost savings it is able to achieve through use of the integrated up-country to port Export Select logistics service offering.

The efficiency rebate applies when a client nominates or transfers their “new season” grain stock to the Export Select pathway between 1 October – 31 January of the relevant service year. Viterro Operations also provides a reduced efficiency rebate for grain which is nominated or transferred to the Export Select pathway after 31 January (which reflects the reduction in efficiencies gained with later transfers).

The rebate reflects the fact that the early nomination of grain to the Export Select pathway reduces Viterro Operations’ costs and also improves productivity due to efficiencies gained in respect of cargo accumulation. Early nomination of grain to the Export Select pathway better enables Viterro Operations to:

- manage clearance of up-country sites;
- plan the receipt of grades into port; and
- assess transport requirements and engage appropriate resources (e.g. committing to larger or more frequent train sets and/or larger volumes for transportation can involve significant cost savings compared with incremental increases to requirements over the course of the season). In particular, early nominations to Export Select assist Viterro Operations in managing the risk of paying the annual fixed cost for securing train capacity which is then made available to all clients. The annual volume determines the cost of those assets to Viterro Operations.

Clearance of sites can be better managed because early nomination of Export Select enables Viterro Operations to move grain during the peak receipt periods allowing an optimal mix of storage assets usage at sites during this time.

Early nomination and commitment to Export Select also assists with operating a more efficient level of segregations at up-country sites during harvest and enables Viterro

Operations to plan accumulation from a smaller number of sites by bulking tonnage through transfers. Rail assets can load from a single site rather than having to source from a number of sites because of an individual client's disaggregated ownership. This benefits in both operating costs and in maximising logistics capacity in the supply chain. It also reduces the number of fumigations required by minimising part filled cells (the full volume of storage has to be fumigated, regardless of the tonnes contained within) and enables a more optimal carry-over strategy of stock between harvest seasons. As a result the associated costs with operating these sites (including fumigations and labour costs) are reduced.

Export Select also enables Viterra Operations to better manage the quantity, timing and segregations of, grain being moved to port on a daily basis to use port infrastructure and labour resources most efficiently. For example, coordinating grades being received reduces the need to swap between grades through common discharge and conveying points.

The \$2.45 rebate represents a mechanism for Viterra Operations to share these efficiencies and cost savings with its clients.

Export Select also provides further benefits to clients through the ability to consolidate their stocks and obtain logistics services to meet their cargo accumulation requirements if so desired.

2.2 Approval of third party storage sites

- (a) *Please provide details of all storage sites that have been 'approved' by Viterra Operations, including, but not limited to, the operator, the type of storage, the volume of storage and the location.*

[Confidential]

- (b) *Please provide details of all storage sites that have been subject to Viterra's approval process and not been approved, including but not limited to the operator, the type of storage, the volume of storage and the location and the reason(s) for failing to approve that storage site.*

[Confidential]

- (c) *The ACCC understands that the audit and accreditation process was developed by Viterra Operations. Please provide the following details:*

- *The source of the information checklist*
- *Who assesses the storage sites and the qualifications of the staff concerned*
- *What happens to the information regarding third party storage sites collected during the assessment process, and who has access to that information.*

Viterra Operations maintains certification to internationally recognised standards for quality and food safety in its grain handling operations. This includes ISO 9001, a Quality Management System that focuses on product quality, consistency, continual improvement and meeting domestic or export destination customer requirements, and ISO 22000, a Hazard Analysis Critical Control Points (HACCP)-based food safety management system, designed to protect the food supply from biological, chemical and physical hazards through controls such as Good Operating Practices and Critical Control Points.

Viterra Operations has developed the information checklist, based on its qualifications and substantial experience as a grain handling company and Port Terminal Operator. In developing the checklist, Viterra Operations obtained input from its quality department, transport and logistics department, and commercial and compliance department.

Viterra Operations and the staff in these divisions also have substantial experience in relation to third party storage sites, having (along with Ausbulk and ABB Grain) purchased storage space from (or entered into franchising agreements with) a range of third party storage providers across Australia for a number of years. Throughout this period, Viterra Operations has developed (based on experience) internal policies, procedures and standards to assess whether third party storage systems are consistent with industry standards.

The assessment of third party storage sites is (or has, over the past few years, been) conducted by one of the following members of the quality department from Viterra Operations:

[Confidential]

- (d) ***What dispute resolution mechanisms apply in the event that a third party disagrees with Viterra's findings following an audit and accreditation process?***

Viterra Operations has shown a substantial willingness to engage in commercial negotiations with applicants in circumstances where their storage facilities do not satisfy the objective criteria for approval as a Third Party Storage Facility.

[Confidential]

Storage services provided by third parties are not Port Terminal Services and are not governed by the Current Access Undertaking provided by Viterra Operations. However, ultimately, if an access seeker to Viterra Operations Port Terminal Services is dissatisfied with the receival fees payable in respect of their wheat delivered to port from third party storages, and is unable to negotiate a satisfactory resolution with Viterra Operations, they can have recourse to the dispute resolution provisions set out in the Proposed Access Undertaking or access agreement (as applicable).

Viterra Operations notes that there have been no disputes to date under either the Current Access Undertaking or the access agreements entered into with clients.

3 Information handling

3.1 Publication of information

- (a) ***The ACCC understands that the following information is published on Viterra's website in accordance with the 2009 undertaking, and it is proposed that this practice continue pursuant to the proposed 2011 undertaking:***

- ***Aggregate stocks of bulk wheat and non-bulk wheat grains held at each port terminal (clause 10.1(a))***
- ***Details of booking applications including the name of the exporter and the volume of Bulk Wheat to be exported (the shipping stem)***

Please provide details of any additional types of information that is published or provided to third parties without restriction, in relation to the quantity or quality of

stock held by Viterra either at port or up-country and any other stock information. Please include details as to how often this information is updated, and the degree this information is aggregated.

In addition to the capacity information published in the Capacity Table on its website, Viterra Operations has made a substantial amount of information publicly available with respect to commodities that are managed through its grain network including:

- (i) **Access to grower warehousing information** - Growers are able to “opt in” to have information on their warehoused grain disclosed to other grain marketers by completing a Warehouse Disclosure Authority Form (see **Attachment 6**). This information is collated in warehouse disclosure reports which are provided to registered marketers who have ‘opted in’ to receive a warehouse disclosure report on a regular basis. Depending on the level of consent given by a grower, the report will contain either the following information:
 - trading name, National Grower Register (“**NGR**”), phone number, season, commodities, site and tonnage in store; or
 - the trading name, NGR, phone number, season, commodity and site;
- (ii) **Quality data reports** - Quality data reports for major grades of barley, wheat and canola are available for all users of the ezigrain system (no log-on is required to view this report). They contain daily weighted average quality data for each major grade of barley, wheat and canola which is received from growers at Viterra Operations’ sites where more than 500 tonnes of that grade of grain is contained. The barley and wheat reports contain bin grade, site name, moisture levels, test weight, protein levels and screenings. The canola report contains bin grade, site name, oil levels, impurities levels, defective grain levels, protein levels and test weight. The reports are updated as grower receival deliveries are received into the stack²;
- (iii) **Quality data - minor grades** - Reports for minor grades of wheat, barley and canola are provided directly to clients on an *ad hoc* basis if requested. A client must have at least one tonne of grain at a Viterra Operations site to receive the stack average quality data at that site; and
- (iv) **Shipping statistics** - Monthly tonnages of export grain shipped from Viterra’s ports are available under shipping statistics on Viterra Operations’ Port Access and Shipping Stem page. These statistics are broken down into port zone and commodity.

Other information which is available on ezigrain includes: grain receivals classification standards³, storage allocation/site availability⁴, silo harvest operating hours, quality policies (e.g. in respect of weather damage, dark tipping, sticks and stones), and daily cash and pool prices.

Clients can also directly request (and will be provided with) stock confirmation certificates, grain season certificates regarding loading vessels, grain origin

² See, for e.g., <http://ezigrain.abb.com.au/QualityStats/QualityStats2.asp?commodity=barley&date=2-May-11>

³ See: <http://ezigrain.abb.com.au/receivalstandards/receivalstandards.asp>

⁴ See: <http://ezigrain.abb.com.au/reports/StorageAllocation.asp#criteria>

certificates regarding loading vessels and sampling results (zone, site and shipping sample information).

- (b) *Please provide details of any additional types of stock information that is available on a limited basis, such as via Viterra's ezigrain website or provided to clients of Viterra on request.*

Please see above.

3.2 Information sharing — Viterra Limited / Viterra Operations Limited

- (a) *For each of Viterra Limited and Viterra Operations Limited and any other related corporate entity involved in the management of port terminal services in South Australia please provide an organisational chart.*

[Confidential]

- (b) *Please provide details as to any of Viterra Operation's policies or procedures, if any, in relation to the sharing of information with third parties, including Viterra Limited, that is received by virtue of its role as port terminal operator.*

Both the Current Access Undertaking (and Proposed Access Undertaking) and Standard Terms require that Viterra Operations maintains the confidentiality of information that is provided to it in the course of negotiations or any dispute, and will not use that information for any other purpose.

The Current Access Undertaking and Proposed Access Undertaking also contain non-discrimination provisions which relate to the provision of access to the Port Terminal Services to Viterra Limited and third party clients.

[Confidential]

It has also substantially increased the level of information, and the transparency of information, provided to all clients. This, together with the mandatory publication requirements every business day, further reduces any perceived competitive benefit or informational advantage for Viterra Limited.

- (c) *Please advise whether employees of Viterra Limited are able to access stock information such as grade and quantities, provided to Viterra Operations in their role of port terminal operator.*

[Confidential]

- (d) *In relation to any additional capacity that becomes available after the 'available capacity table' indicates that capacity has been reached for a particular shipping slot at a particular port, please advise if any employees of Viterra Limited become aware of available additional capacity prior to notification to industry more broadly.*

Employees of Viterra Limited do not become aware of available additional capacity prior to the notification that is provided to all clients.

As set out in our previous submissions, where Viterra Operations determines that additional capacity can be made available, it simultaneously informs all industry participants by email.

4 Further information

If the ACCC requires further information in relation to the matters set out in this response, Viterra Operations would be pleased to assist.

Viterra Operations Ltd
5 May 2011